



## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the FTC's portion of the information collection requirements contained in the Consumer Financial Protection Bureau's Regulation N (the Mortgage Acts and Practices—Advertising Rule). The FTC generally shares enforcement of Regulation N with the Consumer Financial Protection Bureau (CFPB). The current clearance expires on January 31, 2023.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](https://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. The [reginfo.gov](https://www.reginfo.gov) web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

**FOR FURTHER INFORMATION CONTACT:** Carole L. Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3230.

## **SUPPLEMENTARY INFORMATION:**

*Title:* Mortgage Acts and Practices – Advertising (Regulation N), 12 CFR part 1014.

*OMB Control Number:* 3084-0156.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The FTC and the CFPB generally share enforcement authority for Regulation N and thus the two agencies share burden estimates for Regulation N.<sup>1</sup> Regulation N's recordkeeping requirements constitute a "collection of information"<sup>2</sup> for purposes of the PRA.<sup>3</sup> The Rule does not impose a disclosure requirement.

Regulation N requires covered persons to retain: (1) Copies of materially different commercial communications and related materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the relevant time period.<sup>4</sup> A failure to keep such records would be an independent violation of the Rule.

Commission staff believes the recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers; real estate brokers and agents;

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<sup>1</sup> As background, the FTC's Mortgage Acts and Practices—Advertising Rule, 16 CFR pt. 321, was issued by the FTC in July 2011, 76 FR 43826 (July 22, 2011), and became effective on August 19, 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred to the CFPB the Commission's rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011. As a result, the CFPB republished the Mortgage Acts and Practices—Advertising Rule, at 12 CFR pt. 1014, which became effective December 30, 2011. 76 FR 78130. Thereafter, the Commission rescinded its Rule, which was effective on April 13, 2012. 77 FR 22200. Under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation N.

<sup>2</sup> Section 1014.5 of the Rule sets forth the recordkeeping requirements.

<sup>3</sup> See 44 U.S.C. 3502(3)(A).

<sup>4</sup> Section 1014.5 of the Rule sets forth the recordkeeping requirements.

home builders, and advertising agencies.<sup>5</sup> As to these persons, the retention of these documents does not constitute a “collection of information,” as defined by OMB’s regulations that implement the PRA.<sup>6</sup> Certain other covered persons such as lead generators and rate aggregators may not currently maintain these records in the ordinary course of business.<sup>7</sup> Thus, the recordkeeping requirements for those persons would constitute a “collection of information.”

The information retained under the Rule’s recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule’s requirements or to bring enforcement actions based on violations of the Rule.

*Likely Respondents:* Lead generators and rate aggregators.

*Estimated Annual Hours Burden:* 1,500 hours.

- Derived from 1,000 likely respondents x approximately 3 hours for each respondent per year to do these tasks = 3,000 hours.

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<sup>5</sup> Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.*, Fla. Stat. 494.00165 (2021); Ind. Code Ann. 23–2.5–8.5 (2021); Kan. Stat. Ann. 9–2208 (2022); Minn. Stat. 58.14 (2021); Wash. Rev. Code 19.146.060 (2021), and WAC 208-660-450 (2022). Many mortgage brokers, lenders (including finance companies), and servicers are subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. *See, e.g.*, Mich. Comp. Laws Serv. 445.1671 (2022); N.Y. Banking Law 597 (Consol. 2021); Tenn. Code Ann. 45–13–206 (2021). Lenders and mortgagees approved by the Federal Housing Administration must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. *See* 24 CFR pt. 202. Various other entities, such as real estate brokers and agents, home builders, and advertising agencies can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law. *See, e.g.*, 76 Del. Laws, c. 421, sec. 1.

<sup>6</sup> *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

<sup>7</sup> *See, e.g., United States v. Intermundo Media, LLC, dba Delta Prime Refinance*, No. 1:14-cv-2529 (D. Colo. filed Sept. 12, 2014) (D. Colo. Oct. 7, 2014) (stipulated order for permanent injunction and civil penalty judgment), available at <https://www.ftc.gov/system/files/documents/cases/140912deltaprimestiporder.pdf>. The complaint charged this lead generator with numerous violations of Regulation N, including recordkeeping, and of other federal mortgage advertising mandates.

- Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.

*Estimated Annual Labor Cost Burden:* \$26,550, which is derived from 1,500 hours × \$17.70 per hour.<sup>8</sup>

On August 24, 2022, the FTC sought comment on the information collection requirements associated with the Rule. 87 FR 51982. The FTC received no germane comments during the public comment period. Pursuant to OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 87 FR 51982.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16

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<sup>8</sup> This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. See U.S. Bureau of Labor Statistics, Occupational Employment and Wages—May 2021 table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation"), released March 31, 2022, available at <http://www.bls.gov/news.release/pdf/ocwage.pdf>.

CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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